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IN THE

Supreme Court of the United States

October Term, 1968.
No. 1030

ALFRED E. COLEMAN, *et al.*,

Petitioners,

vs.

UNITED STATES OF AMERICA and WALTER J. HICKEL, Secretary of the Interior,

Respondents.

REPLY BY PETITIONERS TO MEMORANDUM FOR THE RESPONDENTS.

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SUBJECT INDEX

	Page
Statement	1
Argument	1

TABLE OF AUTHORITY CITED

Statute

United States Code, Title 30, Sec. 161 ..... 3, 4

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Statement.

The Department of the Interior, through its attorneys, has filed a Memorandum for the Respondents in opposition to our Petition for Writ of Certiorari in the above case.

This Reply is in answer to said Memorandum.

ARGUMENT.

I.

Since the filing of the Petition for Writ of Certiorari herein, there has been a substantial change, which, in our opinion, requires the granting of the Writ of Certiorari and a re-argument of the case.

The former Secretary of the Interior, Stewart L. Udall, was made a defendant in the case and has been a respondent up until the new Secretary, Walter J. Hickel, was appointed.

The first notice that petitioner had of the change in one of respondents was the receipt from the Solicitor General's office for copies of the petition which we sent him.

Again, the attention of the Court is directed to the philosophy of the Department of the Interior concerning the mining laws which was stated by Mr. H. R. Hochmuth in his address to the Rocky Mountain Mineral Law Institute in July of 1964, from which we quote three passages.

> "Had not this conversion been made, a new mining law would have been an absolute necessity many years ago."
>
> "There can be no gainsaying that the mining law of 1872 is not administered as it was originally written and intended."
>
> "The result being that what we are administering today is not the mining law, but the rather substantial body of legal and quasi-legal precedents which largely are of our own making."

With the new Secretary of the Interior there undoubtedly will be a new philosophy in the Department of the Interior. Therefore, the new Secretary should have the opportunity of examining the *Coleman* case and stating the corrected views of the Department.

II.

No case is finally decided until it is decided correctly. The decision of this Court on April 22, 1968 was based on statements of law and fact made by the attorneys for the Department of the Interior, which are contrary to the evidence which appears in full in the appendix filed herein (292 pages long) and laws applicable thereto which are discussed in our petition.

(a) For instance, the pertinent portion of Section 161 of the Mining Laws (30 U.S.C.), applicable hereto, is clear and simple and therefore there was no authority under the law for this Court to interpret that section to be limited to special kinds of building stone.

(b) At the hearing of the contest complaint the Hearing Examiner stated to Mr. Coleman, who tried his own case, as follows:

> "Hearing Examiner Wood: This is not a contest on Public Law 167, Mr. Coleman."

This statement appears at page 139 of the Appendix and should have been noted by whoever did the research for this Court. Therefore, the question of the common varieties of the 1955 law had no place in this decision.

III.

The Solicitor General, in his Memorandum in opposition to our Petition, received February 20, 1969, refers to the action of the Ninth Circuit in stating they could find no authority to do anything under the mandate from this Court.

The fact that the Court of Appeals for the Ninth Circuit permitted the filing of a Petition by Coleman, *et al.* and set the matter down for argument, is proof that the Court felt there was merit in the Petition of Coleman, *et al.* Otherwise, the Petition would have been summarily dismissed by the Ninth Circuit.

We quote the concurring statement of Chief Judge Chambers where he said:

> "There is a puzzle here: Why did the Supreme Court remand the case to us?
>
> "But I have reluctantly concluded it left us no discretion. I have tried and failed to find some way we could salvage some part of our original opinion (see 363 F.2d 190) for which I retain my fondness."

This again proves that the judges of the Ninth Circuit must have believed that there was merit in the Coleman petition.

IV.

The Solicitor General, on page 2 of his Memorandum, refers to the return of the land to the National Forest. This reminds us of the error in the original brief in this case by the Government and the decision of this Court which indicates its belief that Mr. Coleman was not in good faith in locating the stone.

While the land covered by the Coleman mining claims is within the National Forest, it is not Forest land because it is covered by huge stones and is good for nothing else but production of such stone as authorized by Section 161 of the Mining Law. This is clearly proven by the following, which appears in the District Court record and/or the Appendix.

A direct finding as to the good faith of Mr. Coleman is stated in the decision of the Director of the Bureau of Land Management. The following language appears at page 257 of the Appendix in this case.

> "It is clear from the patent application and evidence submitted at the hearing, that the Baldwin Lake Quarry Claims were located solely for the building stone therein contained under the Act of August 4, 1892 (30 U.S.C. sec. 161)."

That the land is good for nothing except producing building stone is proved by the following.

The United States Attorney, in filing his original Motion for Summary Judgment, attached thereto as Exhibit 2 a report made by D. M. Tucker, Recreation and Lands Staff Officer to the Regional Forester, concerning the Coleman mining claims. Here is final statement on page 2.

> "2. What use do we intend to make of the lands?
>
> A. *Timber*—No commercial timber on the claims. Pinyon and juniper serve esthetic and soil erosion purposes.
>
> B. *Forage*—No forage present.
>
> C. *Watershed*—No extraordinary problems involved due to rock and shale being present.
>
> D. *Wildlife*—No wildlife dependent on the area but the spring involved should be used for the development of water fowl habitat in connection with Baldwin Lake.
>
> E. *Minerals*—Is a source for local building stone. No use of any consequence of this stone other than in the Big Bear area with a few loads going out of the Valley.

3. What are the claims suitable for?

They are suitable for scenic views, forest and mountain esthetics and for supplying building stone for local uses."

This is further supported by the following finding in the decision of the Director of the Bureau of Land Management on appeal and is found on page 254 of the Appendix filed herein.

"* * * Applying the comparative value test to the lands within these claims, as no evidence has been presented that the lands have value for recreational or other non-mining purposes exceeding the values of the lands for their building stone, it must be conceded that the lands are 'chiefly valuable' for their building stone."

For the reasons herein stated, in addition to the reasons stated in our Petition for Certiorari, we respectfully request that a Writ of Certiorari be granted so that justice may be done to Alfred Coleman, the locator of the claims and a prospector in the true sense of the word, as intended by the Mining Laws of the United States originally passed in 1872, for the benefit of individuals.

Dated: February 24, 1969.

Respectfully submitted,

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